APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

1955
Nov. 25

SINAEEN MOHIDDIN MALBARI, APPLICANT (ORIGINAL DEFENDANT) *v.* KAUSHALKISHORE BHAGWANDAS SHARMA, OPPONENT (ORIGINAL PLAINIFF).*

Bombay Rents, Hotel and Lodging House Rates Control Act, (Bom. LVII of 1947), ss. 11, 17, 28, 29—Bombay Rents, Hotel & Lodging House Rates Control Rules, 1948, r. 9-D—Appeals under—Whether cross-objections maintainable— B. R. H. and L. H. R. C. Rules, r. 15—Court-fee payable on tenant's cross-objections against decree for arrears of rent passed in favour of landlord.

A landlord filed a suit for arrears of rent and damages at Rs. 150 per month and for ejectment of his tenant. The Court passed a decree in favour of the landlord for arrears of rent and damages amounting to Rs. 4,211 but refused ejectment. The landlord having appealed against such refusal, the tenant filed Cross-objections against the decree for Rs. 4,211.

Held, that the Cross-objections were maintainable as the rules framed under the Rent Act make the provisions of O. 41, of the Code of Civil Procedure applicable to the appeals under the Rent Act.

Raghunathdas v. *Secretary of State,*[1] *Ramasray Singh* v. *Bibhi San Sinha,*[2] *Alagappa Chettiar* v. *Chokalingam Chettiar,*[3] referred to.

Held, that the proper Court-fees payable on the Cross-objections being governed not by rule 15 (*1*) but rule 15 (*2*) the fees were payable on an *ad valorem* basis on the amount in respect of which the Cross-objections were filed.

CIVIL Revision Application against the decision of V. S. Bakhale, Esquire, District Judge at Poona in appeal from the decision of H. S. Ursekar, Esquire, Third Joint Civil Judge, Junior Division, at Poona.

C. R. A. No. 863 of 1955.

Y. V. Chandrachud for the Applicant.

C. R. Dalvi, for the Opponent.

C. R. A. No. 1558 of 1955.

V. K. Joshi, for the Applicant.

H. B. Datar, Amicus curiae, for the Opponent.

Gajendragadkar J.—These two revisional applications raise a short question about the proper Court-fees leviable on cross-objections preferred by the tenant in both the cases. The learned District Judge, before whom these cross-objections were preferred, has directed the tenants to pay adequate Court-fees on the footing that the decree for the payment of arrears of rent which has been passed against them is a decree for the payment of money and it is necessary that the cross-object-

*Civil Revision Application No. 863 of 1955, with Civil Revision Application No. 1558 of 1955.

1. (1905) 29 Bom. 514.
2. [1950] A. I. R. Cal. 372.
3. (1918) 41 Mad. 904.

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ing respondents should declare what amount they propose to dispute out of the decretal amount and should pay Court-fees on it on an *ad valorem* basis. This view is challenged by the petitioners in both the cases before me.

It would be convenient to mention the material facts leading to both the revisional applications. Civil Revision Application No. 863 of 1955 arises from Civil Suit No. 1465 of 1953 filed by the landlord against the tenant for ejectment. In this suit the landlord claimed arrears of rent as well. The arrears of rent were claimed at the rate of Rs. 150 per month which was the contractual rent agreed between the parties. In this suit the tenant pleaded by his written statement that the contractual rent was in excess of the standard rent and he prayed that the standard rent should be fixed in respect of the premises in suit. The learned trial Judge held that the contractual rent was not unreasonable or excessive and he passed a decree against the tenant for the payment of Rs. 4,000 and odd by way of arrears of rent. The claim for ejectment made by the landlord was rejected. Against the decree refusing ejectment the landlord preferred an appeal to the District Court and when the notice of this appeal was served on the respondent he preferred cross-objections on December 10, 1954. The learned Judge has called upon the respondent-tenant to pay Court-fees on the basis which I have already indicated, and the tenant, by his present Revision Application No. 863 of 1955, disputes the validity of the order made by the learned District Judge.

Civil Revision Application No. 1558 of 1955 arises from an ejectment suit filed by the landlord No. 317 of 1954. In this suit, the landlord claimed to recover possession of the demised properties and arrears of rent. He claimed rent at the rate of Rs. 90 per month. Meanwhile an application had been filed by the tenant for fixation of standard rent under s. 11 of the Rent Act: this was Application No. 384 of 1952. This application had been filed before the Court of Small Causes at Poona. Subsequently, the suit filed by the landlord for ejectment and arrears of rent and the application made by the tenant for the fixation of standard rent were heard together and on November 19, 1954, the standard rent was fixed at Rs. 45 per month and a decree for payment of arrears was passed against the tenant to the extent of Rs. 420. The claim for ejectment made by the landlord was dismissed. Against this decree the landlord preferred an appeal No. 69 of 1955 and when the respondent received notice of this appeal he preferred cross-objections disputing the correctness of the standard rent fixed by the leaned trial Judge. An order has been passed by the learned District Judge calling upon the tenant-respondent to pay adequate Court-fees and that order is challenged by the

tenant in his present revisional application. At the time when this latter revisional application came before me for final disposal, the landlord was not represented before me, and so at my request Mr. H. B. Datar has appeared *amicus curiae* for the opponent.

In dealing with the question about the proper Court-fees leviable on such cross-objections, it would be necessary in the first instance to consider whether it is open to the parties to file cross-objections in appeals arising from orders made under the Rent Act. If the provisions relating to appeals are considered literally, it would appear that these provisions do not in terms authorise the filing of cross-objections. But that would not be decisive of the question as to whether a respondent can file cross-objections where an appeal has been provided for against certain specified orders made under the Rent Act. Section 29 of Act LVII of 1947 provides for appeals and it is common ground that where a landlord claims ejectment and arrears of rent from his tenant and the claim is either wholly or partly decreed, an appeal lies against the decree. Section 29 (*1*), cl. (*b*) provides that in the mofusil an appeal shall lie, from a decree or order made by a Judge of the Court of Small Causes established under the Provincial Small Cause Courts Act, or by the Court of the Civil Judge deemed to be the Court of Small Causes under cl. (*c*) of sub-s. (*2*) of s. 28, or by a Civil Judge exercising such jurisdiction, to the District Court. Thus there is no doubt that the landlord was entitled to prefer an appeal against the decree which was passed in the suit filed by him. Under s. 11 of the Act, it is open to the tenant to apply for the fixation of standard rent. Proviso (III) to s. 29 (*1*) (*b*), however, lays down that no appeal shall lie against an order made upon an application for fixing the standard rent or for determining the permitted increases in respect of any premises except in a suit or proceeding in which an appeal lies. This proviso has been added by s. 17 (*1*) of Bombay Act LXI of 1953. It would be noticed that the standard rent can be determined either on an application made by the tenant under s. 11 for the purpose of getting the standard rent determined or in a suit or proceeding in which the tenant can make an appropriate pleading and the Court may proceed to deal with the question of the fixation of standard rent. If an order is made determining the standard rent, not in a suit or proceeding, but on an application made by the tenant for the purpose of getting the standard rent determined, no appeal lies against the order made by the learned Judge. Thus it is clear that the decree passed by the learned trial Judge against the landlord was appealable as a decree, whereas the order passed by the Civil Judge on the application for the fixation of standard rent which had been made by the tenant

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in Civil Revision Application No. 1558 of 1955 was not appealable as such, if it is held that the standard rent had been fixed in the application itself and not in the suit with which it was ultimately consolidated.

There is one more provision to which reference must be made before deciding the question as to whether cross-objections can be filed by the respondent-tenants in the appeals preferred against them. Section 49 of the Act confers upon the State Government the power to make rules. In pursuance of this power, it is open to the State Government to prescribe the procedure to be followed in trying suits or appeals arising from orders made under the Act. It is also open to the State Government to prescribe rules for the levy of Court-fees in suits, proceedings or applications and appeals arising therefrom. Under the powers thus conferred, the State Government has made rules in regard to the procedure and payment of proper Court-fees. Rule 9-D in Chapter IV-A of the Rules provides that in an appeal under s. 29 (*1*) (*b*) of the Act, the District Court shall, as far as may be and with the necessary modifications, follow the practice and procedure prescribed for appeals from original decrees by or under the Code. Rules 9-B and 9-C similarly make the provisions of the Code generally applicable to the proceedings mentioned in those rules. In other words, when an appeal is preferred against a decree passed in an ejectment suit filed by the landlord, the procedure to be followed is the procedure laid down by the Code of Civil Procedure under O. XLI. If that be so, the question which arises is whether the right to file cross-objections is not a procedural right. I have already mentioned that, when providing for appeals, s. 29 in terms has not conferred upon the respondents the right to prefer cross-objections. But that will not take away the right of the respondents to file cross-objections once the Act or the rules framed under the Act make the provisions of O. XLI applicable to appeals under the Act. The right to file cross-objections arises under O. XLI, r. 22, and it seems to me that, if the procedure prescribed by O. XLI applies to appeals, it would be difficult to resist the conclusion that the right which has accrued to the respondents by r. 22, of O. XLI can be denied to them. That is why I am disposed to hold that, though the right to file cross-objections has not been expressly conferred upon respondents in appeals arising under the Rent Act, that right is nevertheless available to them under O. XLI, r. 22.

If authority was necessary in support of this view, I may refer to some decisions where similar questions arose for consideration. In *Raghunathdas* v. *Secretary of State*,[4] Jenkins C. J. and Aston J. had occasion to consider a similar

4. (1905) 29 Bom. 514.

point by reference to the provisions of s. 48 (*11*) of the City of Bombay Improvement Act. An appeal had been provided for by the relevant provisions of the Act, but no right to file cross-objections had been expressly mentioned in the said provisions. Dealing with the question as to whether in such a case, the respondent is entitled to file cross-objections under s. 561 of the Civil Procedure Code, 1882, which corresponds to O. XLI, r. 22, Jenkins C. J. held that, the appeal having been provided for, the Code of Civil Procedure would be applicable and by virtue of s. 561 the respondent would get the procedural right to file cross-objections. The same view appears to have been taken in *Ramasray Singh* v. *Bibhisan Singh*,[5] and in *Alagappa Chettiar* v. *Chockalingam Chettiar*.[6]

The next question which must be considered is, if the cross-objections are competent, what is the proper Court-fees to be paid ? The payment of proper Court-fees in respect of applications, proceedings and appeals under the Act has been dealt with by Chapter VI of the rules framed under the Rent Act. In the present case, I am concerned with r. 15 in particular. The first argument which needs to be examined is whether the Court-fees payable by the respondent on his cross-objections can attract the provisions of r. 15, sub-r. (*1*). Under this sub-rule, the Court-fee leviable in miscellaneous applications in courts outside Greater Bombay shall be eight annas, and in appeals against orders passed in such miscellaneous applications shall be one rupee. Mr. Joshi for the petitioner in Revision Application No. 1558 of 1955 has contended that the Court-fees which his client should have been called upon to pay on his cross-objections should be Re. 1 and no more, and he says that a Court-fee stamp of Re. 1 has already been affixed by him on his cross-objections. This argument must be rejected because the right to file cross-objections which the respondent seeks to exercise arises from the fact that an appeal against the decree passed in the landlord's suit has been filed. It would be remembered that, by virtue of the provisions contained in s. 29 (*1*), proviso (III), an appeal against an order fixing the standard rent in an application made by the tenant in that behalf is incompetent, with the result that, when the learned Judge fixed the standard rent of Rs. 45 in the application made by the tenant for that purpose, that order was not appealable. This position is not disputed. It is because the landlord preferred an appeal against a part of the decree passed in his suit for ejectment that a notice of the appeal was served on the tenant, and as the respondent who has received notice of the appeal the tenant seeks to exercise his right of filing cross-objections. It would, therefore, be clear that the cross-objections are preferred, not against the orders passed in the

5. [1950] A. I. R. Cal. 372. 6. (1918) 41 Mad. 904.

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application for the fixation of standard rent, but against a part of the decree itself. The decree directs the tenant to pay a certain amount by way of arrears of rent and it is this part of the decree which the tenant challenges by his cross-objections. If that be the true position, it is difficult to accede to the argument that the tenant should be allowed to pay a Court-fee of Re. 1 on his cross-objections.

In Civil Revision Application No. 863 of 1955, the contention that the tenant should be allowed to pay Court-fee of Re. 1 on his cross-objections must be rejected on the ground that the order declaring the standard rent was not made in a miscellaneous application as defined by the rules framed under the Rent Act. I have already mentioned that in this revisional application the plea for the fixation of standard rent was made by the tenant in his written statement in the suit and the standard rent has no doubt been declared. But r. 15 (*1*) deals with miscellaneous applications and appeals arising against orders passed in such miscellaneous applications; and r. 2 (*b*) defines a "miscellaneous application" as meaning an application for fixing the standard rent, except where the said relief is claimed in a pending suit or proceeding. This plainly means that, if the tenant claims that the standard rent should be fixed by filing a written statement in a suit against him by the landlord for ejectment and for recovery of arrears of rent, his plea for the fixation of standard rent has not been made in a miscellaneous application and so the provisions of r. 15 (*1*) cannot be invoked by him either for the application which was in the form of a written statement or for an appeal against the order fixing the standard rent. In this case again, what the tenant-respondent seeks to do is to challenge a part of the decree, and his right to file cross-objections arises under O. XLI, r. 22, because he is a respondent in an appeal filed against the other part of the decree.

I must, therefore, hold that the Court-fees payable in respect of the cross-objections filed by the tenants in the two appeals in question must be governed by r. 15, sub-r. (*2*). This sub-rule lays down that, in suits, appeals and other proceedings in Courts outside Greater Bombay, the Court-fees leviable shall be the same as are chargeable under Chapter III of the Court-fees Act, and that the provisions of that Act shall apply to the recovery of such Court-fees. It is, therefore, necessary to decide what amount of Court-fees is leviable in respect of these cross-objections under the relevant provisions of the Court-fees Act and this problem presents no difficulty at all. In both the cases, the decrees direct the tenants to pay specified amounts to the landlords by way of arrears of rent. No doubt, this direction is preceded by the determination of the question as to what is the standard rent. But the determina-

tion of the question of standard rent by itself has not given rise to the cross-objections and cannot in law give rise to such cross-objections. The right to file cross-objections which flows from O. XLI, r. 22, in terms is referable to the decree in the appeal and the decree is obviously a decree for the payment of the amount mentioned by it. In the case of a decree directing the defendant to pay a specified amount of money, if the defendant wants to prefer an appeal or file cross-objections, it is necessary that he should make up his mind as to what amount he admits and what amount he seeks to dispute in the appeal. In respect of the amount intended to be disputed by him in the appeal he will have to pay proper Court-fees on an *ad valorem* basis. There is obviously no scope for invoking the provisions of Schedule II, item 17, to the Court-fees Act in such a case, because the appellate Court is not determining the standard rent for the first time where the tenant cannot say what the standard rent would be. Judicially the standard rent has been determined, and it is for the tenant to decide to what extent he disputes the correctness and validity of the said determination. That would determine the amount in respect of which he wants to prefer his cross-objections and it is on the amount thus fixed that he would have to pay Court-fees on an *ad valorem* basis. That is the view which the learned District Judge has taken in both the cases and I am satisfied that this view is obviously correct.

In the result, both the revisional applications fail and the rules are discharged.

Since Mr. H. B. Datar appeared at my request *amicus curiae* in Revision Application No. 1558 of 1955, there would be no order as to costs in that application. The rule in Revision Application No. 863 of 1955 will be discharged with costs.

Both the petitioners given time to pay Court-fees on their cross-objections till December 23, 1955.

Rule discharged.

G. N. V.